

William A. Hall and Beef)
Transport, Inc.,)
Plaintiffs/Appellants,)
v.)
Tennessee Dressed Beef Co.)
and Richard N. Hall,)
Defendants/Appellees,)
and)
William A. Hall, derivatively)
on behalf of Tennessee)
Dressed Beef Co.,)
Plaintiff/Appellant,)
v.)
Richard N. Hall,)
Defendant/Appellee.)

Appeal No.
01-A-01-9510-CH-00430

Chancery Court No.
93-1246-III

FILED

June 28, 1996

**Cecil W. Crowson
Appellate Court Clerk**

COURT OF APPEALS OF TENNESSEE

MIDDLE SECTION AT NASHVILLE

APPEAL FROM THE CHANCERY COURT, PART THREE

AT NASHVILLE, TENNESSEE

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AFFIRMED IN PART, REVERSED IN PART, AND REMANDED

SAMUEL L. LEWIS, JUDGE

OPINION

This is an appeal by plaintiffs/appellants, William A. Hall and Beef Transport, Inc. ("BTI"), from an order of the chancery court granting summary judgment in favor of defendants/appellees, Richard A. Hall and Tennessee Dressed Beef Company ("TDBC").

William Hall and Richard Hall are brothers. In 1962, they incorporated TDBC. From 1962 until 1992, William Hall and Richard Hall each owned one-third (7,500 shares) of the outstanding shares, and Louis and Patrick McRedmond each owned one-sixth (3,750 shares) of the outstanding shares. Three years after forming TDBC, the Halls incorporated BTI and divided BTI's outstanding shares equally. The primary purpose of BTI was to provide hauling services to TDBC, but it also provided transportation services to third parties. BTI's offices were in the same building as the offices of TDBC.

Initially, the Halls were both active in the daily operations of TDBC and both served as directors. Moreover, Richard Hall served as President of the company. In the late 60's or early 70's, the brothers began to disagree about corporate decisions. In the summer of 1988, William Hall established an external office in Brentwood, Tennessee in order to assess TDBC's diversification options. This move also operated to separate the two brothers who could no longer work together. As a result of the move, William Hall was not active in the day to day operations of TDBC.

Neither of the McRedmonds participated in the management of TDBC. Further, it is clear that the McRedmonds were not pleased with the way the Halls carried on the business of TDBC. In fact, the McRedmonds even filed a lawsuit against the Halls, but were unsuccessful. *Tennessee Dressed Beef Co. v. Hall*, 519 S.W.2d 805 (Tenn. App. 1974).

In 1992, the Internal Revenue Service ("IRS") audited BTI's tax returns. Because the brothers also owned TDBC, the IRS began to audit TDBC's books as well. The focus of the investigation was the prices charged by BTI to TDBC. The high prices concerned the IRS because they caused a transfer of income from TDBC to BTI, a subchapter S corporation. Despite the IRS's concern, it did not require either company to make any adjustments.

The Halls soon began to negotiate with one another for the sale of the other's TDBC stock. Because their attempts were unsuccessful, they individually approached the McRedmonds. William Hall was first to approach the McRedmonds, but was unable to strike a deal. He claimed that his unsuccessful attempts were due to the deceit of Richard Hall. To explain, TDBC sold product to Nashville Recycling, Inc., a company owned entirely by the McRedmond brothers. Over the years Nashville Recycling accumulated an overdue account with TDBC of approximately \$500,000.00. William Hall contended that Richard Hall intentionally hid this account receivable from him so that Richard Hall could use this debt as leverage in negotiating with the McRedmonds.

After negotiating with William Hall, the McRedmonds contacted Richard Hall. On behalf of himself and TDBC, Richard Hall negotiated and entered into a Stock Purchase and Redemption Agreement ("the Agreement") on 26 October 1992. The Agreement provided that TDBC would redeem 7,400 shares of the McRedmonds' stock at \$187.39 per share and that Richard Hall would purchase the remaining 100 shares at the same price. TDBC agreed to pay the McRedmonds \$280,000.00 in cash at closing and promised to pay the principal of \$1,106,724.00 over seven years at 8.75 percent interest. In addition, the Agreement provided that Nashville Recycling would repay its debt to TDBC over five years at 6.25 percent interest. Finally, under the terms of the Agreement, the

McRedmonds gave Richard Hall proxies to vote their shares pending the closing of the Agreement.

On 27 October 1992, one day after executing the Agreement, Richard Hall called a special meeting of TDBC's stockholders for 9 November 1992. The purpose of the meeting, as stated in the notice, was to amend the bylaws. The existing bylaws contained a provision granting the shareholders a right of first refusal. According to the provision, before a shareholder could sell his shares to someone other than the original four shareholders, the other shareholders had a right to purchase the shares at the lowest price at which the shareholder offered to sell. The amended bylaws, proposed by Richard Hall, did not contain a similar restriction. William Hall voted against the amendments, but because Richard Hall was able to vote two-thirds of the outstanding shares, the proposal passed. William Hall claimed that neither he nor the corporation's attorney had any knowledge of the Agreement prior to the meeting.

Following the 9 November meeting, Richard Hall called a meeting of TDBC's shareholders and a meeting of TDBC's Board of Directors. Both meetings were set for 18 November 1992 with the shareholders' meeting occurring first. At the shareholders' meeting, Richard Hall used his majority vote to elect a Board of Directors which consisted of: Richard Hall; Richard Hall's son, Bryan Hall; the new plant manager, Robert Rechter; Dr. Louis Miller; and William Hall. While at this meeting, William Hall learned of the McRedmonds' delinquent account. Following the shareholders' meeting, Richard Hall convened the directors' meeting. At that time, Richard Hall disclosed the existence of the Agreement to William Hall and corporate counsel. Thereafter, the new board approved the Agreement.

With the board's approval of the Agreement, Richard Hall closed the deal. As a result, he presently holds 50.3 percent of the outstanding shares, and William Hall is now the minority shareholder with 49.7 percent of the outstanding shares. William Hall alleged that Richard Hall, using his majority power and the cooperation of the new board members, "engaged in numerous action that benefit himself personally and work to the detriment of W. Hall." Specifically, William Hall alleged that Richard Hall: 1) terminated William Hall's employment with TDBC and his income from TDBC which averaged \$150,000.00 per year; 2) prevented William Hall from inspecting TDBC and BTI information; 3) concealed material information from William Hall; 4) raised Richard Hall's TDBC income an average of \$150,000.00 per year; and 5) unilaterally changed the terms of the haulage contract with BTI to substantially eliminate BTI's profit and increase TDBC's profit.

William Hall and BTI filed a complaint in the chancery court on 29 April 1993. After alleging the above factual scenario, they set forth eleven causes of action. On 29 April 1993, the chancery court entered a temporary restraining order and set a date for a hearing on a temporary injunction. On 18 May 1993, the chancery court entered an order entitling William Hall to inspect the books and records of BTI.

On 12 August 1993, Richard Hall and TDBC moved for partial summary judgment. Thereafter, the chancery court entered an order granting the motion for summary judgment as to William Hall's derivative claim on behalf of TDBC. On 8 February 1995, Richard Hall and TDBC filed a motion for summary judgment. The chancery court entered an order granting the motion for summary judgment and dismissed all of the counts except for the seventh.¹ Thereafter,

¹ The seventh count asked the court to judicially dissolve BTI. The court entered an order pursuant to Rule 54.02 of T.R.C.P. that its order was final as to all other counts of the complaint.

William Hall and BTI filed a notice of appeal and asked this court to address the following issues:

1. Whether the trial court properly dismissed, as a matter of summary judgment, appellant William Hall's individual claims for breach of contract against [TDBC] and interference with contract against Richard Hall.

2. Whether the trial court properly dismissed, as a matter of summary judgment, appellant William Hall's claim brought derivatively on behalf of [TDBC] against Richard Hall.

3. Whether the trial court properly dismissed, as a matter of summary judgment, appellant William Hall's claim to dissolve [TDBC].

4. Whether the trial court properly dismissed, as a matter of summary judgment, appellant [BTI's] claims for breach of fiduciary duty against Richard Hall.

5. Whether the trial court properly dismissed, as a matter of summary judgment, [BTI's] breach of contract claim against [TDBC].

6. Whether the trial court properly dismissed, as a matter of summary judgment, appellant William Hall's claims for oppression of minority shareholder against Richard Hall based on his controlling actions with respect to both [TDBC] and [BTI].

7. Whether the trial court properly dismissed, as a matter of summary judgment, appellant William Hall's claim to remove Richard Hall as a director of [TDBC] and [BTI].

I. STANDARD OF REVIEW

This court reviews the decision below de novo applying the same Rule 56 analysis as did the trial court. **Gonzales v. Alman Constr. Co.**, 857 S.W.2d 42, 45 (Tenn. App. 1993). One who files a motion for summary judgment has the burden of establishing that there are no genuine issues of material fact and that the law entitles the moving party to a judgment. **Byrd v. Hall**, 847 S.W.2d 208, 215 (Tenn. 1993). After the moving party makes a properly supported motion, the burden shifts and the nonmoving party must "set forth specific facts, not legal conclusions, by using affidavits or the discovery materials listed in Rule 56.03, establishing that there are indeed disputed, material facts creating a genuine issue that needs to be resolved by the trier of fact and that a trial is therefore necessary." **Id.** In addition, Rule 56 expressly provides that "an adverse party may not rest upon

the mere allegations or denials of his pleading. . . ." Tenn. R. Civ. P. 56.05 (1995).

II. ISSUE ONE: COUNTS ONE AND TWO

Appellants' first issue relates to the first two counts in the complaint. In the first count, William Hall set forth a breach of contract claim against TDBC. To support his claim, William Hall relied on the stock transfer restriction found in the bylaws which the shareholders amended on 9 November 1992. Prior to the amendment, the provision provided as follows:

5. No stock shall be sold by any stockholder unless he has given the corporation twenty days notice of his intention to sell, during which time the other stockholders of record shall have the privilege of purchasing same at the lowest price at which said stockholder offers to sell, but this restriction shall not apply to sales by and between the four original stockholders, or their heirs or the personal representatives of their estates.

In the complaint, William Hall alleged that TDBC's bylaws created a contractual relationship between him and TDBC. He then argued that the stock transfer restriction required TDBC to notify him of the McRedmonds' intent to sell their stock back to the corporation and that TDBC breached the contract when it failed to comply with this provision of the bylaws. In addition, William Hall included a second count against Richard Hall for tortious interference with contract.

It is the opinion of this court that the chancery court properly granted summary judgment in favor of appellees because TDBC was not a party nor a privy to this provision of the bylaws. A person or entity which is neither a party to a contract nor a privy thereto is a stranger to the contract. ***Cherokee Foundries, Inc. v. Imperial Assurance Co.***, 188 Tenn. 349, 354, 219 S.W.2d 203, 205 (1949). Further, "contract provisions . . . are binding upon

the parties to the agreement and do not bind strangers." *Smith v. Elrod*, No. 63, 1990 WL 200584, at *1 (Tenn. App. 14 Dec. 1990) (citing 17 AM. JUR. 2D *Contracts* § 294 (1964)). It follows that this provision did not create a binding contract with respect to TDBC. Thus, as a matter of law, William Hall could not have maintained a breach of contract action against TDBC. Moreover, he could not have maintained a tortious interference claim based on the premise that Richard Hall interfered with the contractual relation between TDBC and William Hall. Because William Hall could not establish a necessary element of both claims, the existence of a contractual relationship, summary judgment was appropriate.

III. ISSUE TWO: COUNT THREE

The third count of the complaint is a derivative action brought by William Hall on behalf of TDBC against Richard Hall. Specifically, William Hall alleged that Richard Hall breached the fiduciary duties that he owed to TDBC. The chancery court dismissed this count after reviewing a motion for partial summary judgment. Although the court's order did not contain any insight into the court's reasoning, the only basis of the motion was the contention that William Hall lacked standing to bring a derivative suit.

Tennessee law provides that a shareholder may bring a derivative action in the name of the corporation to enforce the rights of the corporation. Tenn. Code Ann. § 48-17-401(a) (1995). In order to bring the action, the shareholder must have been a "shareholder of the corporation when the transaction complained of occurred or . . . the person became a shareholder through transfer by operation of law from one who was a shareholder at that time." *Id.* Also, the shareholder must allege with particularity that the

shareholder made a demand and the board of directors refused or ignored the demand or that the shareholder chose not to make a demand and the reason for that decision. *Id.* § 48-17-401(b). Additionally, the Tennessee Rules of Civil Procedure provide that the shareholder must "fairly and adequately represent the interests of the shareholders or members similarly situated. . . ." Tenn. R. Civ. P. 23.06. The parties do not dispute that William Hall fulfilled the requirements of the statute. They do, however, disagree as to whether William Hall met the additional requirement found in Rule 23.06 of the Tennessee Rules of Civil Procedure.

In support of his argument, Richard Hall cited a case from the Eastern Section of the Court of Appeals. *Waterhouse v. Cumberland County Bank*, No. 03A01-9102-CH-00056 and No. 03A01-9106-CH-00079, 1991 WL 199480 (Tenn. App. Oct. 8, 1991). In *Waterhouse*, the court held that a patent conflict of interest exists when a plaintiff attempts to maintain a derivative action on behalf of a corporation at the same time the plaintiff pursues a second, individual action against the corporation. *Id.* at *2. The court then concluded that "as a matter of law, the resulting conflict of interest disqualifies the appellant . . . as a plaintiff who may maintain a derivative action pursuant to Rule 23.06, Tennessee Rules of Civil Procedure." *Id.*

The facts of the present case are easily distinguished from those in *Waterhouse*. The critical distinction is that in *Waterhouse*, the plaintiff/appellant was attempting to represent a number of other similarly situated shareholders in a derivative action while representing his own interests in his individual suit. *Id.* at *1. In contrast, in this case, the minority shareholders represented in the derivative action consist only of William Hall, that is, he is the only similarly situated shareholder. Rule 23.06

does not require a specific number of similarly situated shareholders in order to maintain a derivative action. Moreover, other courts addressing this issue in relation to similar rules of civil procedure have held that the class of shareholders represented by the derivative plaintiff may consist of only one person. *Larson v. Dumke*, 900 F.2d 1363, 1368-69 (9th Cir.), *cert. den'd sub nom. Round Table Pizza, Inc. v. Larson*, 498 U.S. 1012, 111 S. Ct. 580, 112 L. Ed. 2d 585 (1990); *Jordon v. Bowman Apple Prods. Co.*, 728 F. Supp. 409, 412-13 (W.D. Va 1990); *Halsted Video, Inc. v. Guttillo*, 115 F.R.D. 177, 179-80 (N.D. Ill. 1987); *Brandon v. Brandon Constr. Co.*, 776 S.W.2d 349, 353-54 (Ark. 1989); *Eye Site, Inc. v. Blackburn*, 796 S.W.2d 160, 161-63 (Tex. 1990). It is the opinion of this court that the class of shareholders contemplated by Rule 23.06 of the Tennessee Rules of Civil Procedure may consist of one shareholder. Were this not the law, it is very likely that Rule 23.06 would deprive the shareholders of closely held corporations of their ability to bring derivative actions.

In appellees' motion, Richard Hall argued that William Hall lacked standing because there was an actual conflict of interest and because William Hall was using the derivative suit as a bargaining chip. As discussed above, the first argument is without merit because Richard Hall is not a similarly situated shareholder. In fact, the potential for William Hall to inadequately represent other shareholders is nonexistent. Given this, the existence of a derivative action and an individual action does not, as a matter of law, create a conflict of interest. Next, Richard Hall's contention that William Hall is using the derivative suit as a bargaining chip is wholly unfounded. Moreover, there is no other evidence in the record to support a finding that William Hall is incapable of fairly representing his own interests and the

interests of the corporation while at the same time maintaining his individual suit.

As a final point, we note that any conflict of interest which may have existed as a result of filing both a derivative suit and an individual suit is no longer present. To explain, in section II of this opinion, we held that the chancery court properly dismissed William Hall's claim against TDBC for breach of contract. The only remaining action brought by William Hall against TDBC is one for judicial dissolution. It is the opinion of this court that the judicial dissolution action and the derivative action do not necessarily conflict; therefore, the existence of both is not a reason to deny William Hall standing.

For the foregoing reasons, the chancery court erred when it dismissed the third count of appellants' complaint.

IV. ISSUES THREE, FOUR, FIVE, SIX, AND SEVEN

A. Fiduciary Duties and the Business Judgment Rule

Corporate officers and directors owe certain duties to the corporation as a result of their fiduciary relation to the corporation. *Knox-Tenn Rental Co. v. Jenkins Ins., Inc.*, 755 S.W.2d 33, 36 (1988); *see Neese v. Brown*, 218 Tenn. 686, 692-93, 405 S.W.2d 577, 580-81 (Tenn. 1964); Tenn. Code Ann. § 48-18-301, -302, -403 (1995); 3 FLETCHER CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS § 837.60 (per. ed. rev. vol. 1994) [hereinafter FLETCHER]. These duties are the duty of loyalty and the duty of care. 3 FLETCHER § 837.60.

"The duty of loyalty in essence involves conflicting economic

or other similar interests [and] is transgressed when a corporate fiduciary, whether director or officer, uses his or her corporate office to promote, advance or effectuate a transaction between the corporation and such person, and that transaction is not substantively fair to the corporation." *Id.* (footnotes omitted). The Tennessee General Assembly codified this concept of duty with the enactment of Tennessee Code Annotated § 48-18-302 (1995). Specifically, a conflict of interest transaction in Tennessee "is a transaction with the corporation in which a director or officer of the corporation has a direct or indirect interest." Tenn. Code Ann. § 48-18-302(a) (1995). If certain circumstances exist, such as when a director fully discloses his or her interest, the corporation may not void the transaction solely because of the director's or officer's interest. *Id.* The question of whether a director or officer has breached their duty of loyalty is one of fact and depends on all of the surrounding circumstances. 3 FLETCHER § 837.60 (citing *Fitch v. Midland Bank & Trust Co.*, 737 S.W.2d 785, 788 (Tenn. App. 1987)); *see Neese*, 405 S.W.2d at 581.

The duty of care requires both directors and officers to act in good-faith and in the best interest of the corporation "[w]ith the care an ordinarily prudent person in a like position would exercise under similar circumstances. . . ." Tenn. Code Ann. §§ 48-18-301(a), -403(a) (1995); *see Neese*, 405 S.W.2d at 580-81. "Courts apply the duty of care in cases involving alleged negligence, mismanagement, or intentional decisions to commit unlawful acts." 3A FLETCHER § 1029. The issue of whether a breach of the duty of care occurred is one of fact. *Id.* § 1030. "[I]t is difficult, and in many cases impossible, to decide in advance, or to formulate tests for deciding as a matter of law, whether directors or other officers have been guilty of that degree of negligence which will render them liable." *Id.*

The ordinarily prudent person standard is very low, but courts do not generally apply it because of the common-law doctrine known as the business judgment rule.² "Tennessee's courts have consistently followed a noninterventionist policy with regard to internal corporate matters. They have recognized that directors have broad discretion. . . . These decisions squarely align Tennessee with the jurisdictions recognizing and following the 'business judgement rule.'" **Lewis v. Boyd**, 838 S.W.2d 215, 220 (Tenn. App. 1992) (citations omitted) **accord French v. Appalachian Elec. Coop.**, 580 S.W.2d 565, 570 (Tenn. App. 1978). Further, for reasons which will become evident later, courts do not apply the business judgment rule to duty of loyalty issues. 3 FLETCHER § 837.60.

The business judgment rule "is a presumption that in making a business decision the directors [and officers] of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interest of the company." **Aronson v. Lewis**, 473 A.2d 805, 812 (Del. 1984) **accord Lewis**, 838 S.W.2d at 220-21. The protections of the rule will not apply when the director or officer is interested,³ did not actually make a decision, made an uninformed decision, or was grossly negligent. **Aronson**, 473 A.2d at 812; **see** 3A FLETCHER § 1036; 18B AM. JUR. 2D *Corporations* § 1703 (1985); 19 C.J.S. *Corporations* § 482 (1990). Once the plaintiff has shown that the business judgment rule does not apply, the burden shifts to the director or officer to establish that the act at issue satisfied the ordinary care standard. 3A FLETCHER § 1031.

² The business judgment rule applies to both directors and officers and may even apply to majority shareholders. 3A FLETCHER § 1036.

³ Thus, the business judgment rule will not apply if the director or officer breached his duty of loyalty. For this reason, courts do not typically apply the business judgment rule to duty of loyalty issues.

B. Issue Three: Count Four

The third issue of appellants' appeal involves the fourth count of the complaint. In that count, William Hall asked the court to dissolve TDBC. William Hall first asserted that court should dissolve the corporation because the actions of Richard Hall were "illegal, oppressive, or fraudulent. . . ." Tenn. Code Ann. § 48-24-301(2)(B) (1995). In support of this contention, William Hall argued that Richard Hall had breached the fiduciary duties he owed to TDBC and that such a breach was constructive fraud. William Hall also argued that the court should dissolve the corporation because "corporate assets are being misapplied or wasted. . . ." *Id.* § 48-24-301(2)(D).

C. Issue Four: Count Five

In count five of the complaint, BTI alleged that Richard Hall breached his fiduciary duties which he owed to BTI as an officer and director of that company. Specifically, BTI alleged that Richard Hall's breaches included lowering the haulage rates paid to BTI, diverting back haul revenues derived from BTI to TDBC, diverting business from BTI, borrowing an excessive amount of money from BTI, and purchasing a truck for personal use with BTI assets. BTI claimed that these actions increased TDBC's profits and decreased BTI's profits.

D. Issue Five: Count Six

This issue involves a cause of action for conflict of interest brought by BTI against TDBC. BTI alleged that Richard Hall, acting on behalf of BTI, improperly lowered the haulage rates and that

such action was a conflict of interest transaction. This is the same cause of action as described under issue four.

E. Issue Six: Count Eight⁴

In the eighth count, William Hall alleged that Richard Hall breach his fiduciary duties, but in this instance, William Hall claimed that Richard Hall breached fiduciary duties owed to William Hall as a result of Richard Hall's position as a majority shareholder of TDBC. Specifically, William Hall stated in his brief that Richard Hall breached his fiduciary duties by causing TDBC to enter into the stock purchase agreement, by using TDBC's assets to finance the stock redemption, by eliminating William Hall's income, and by increasing his own salary as president of TDBC.

E. Issue Seven: Counts Ten and Eleven

The last two counts of the complaint ask the court to remove Richard Hall as a director of both BTI and TDBC. Specifically, William Hall argued the such action is appropriate because removal is in the best interest of the company and because Richard Hall has acted fraudulently and dishonestly and has committed gross abuses of authority. Tenn. Code Ann. § 48-18-109(a) (1995).

F. Conclusion

All of the claims described above depend on a determination of whether Richard Hall breached either his duty of loyalty or his duty of care. Both of these issues involve questions of fact. Generally, courts may not determine questions of fact on summary

⁴ The sixth issue of appellants' appeal involves counts eight and nine. In this section we address count eight only. See section V for a discussion of the ninth count.

judgment, however; this is not always the case. In negligence cases, courts often explain that proximate cause is a question of fact best left to the jury. *Haynes v. Hamilton County*, 883 S.W.2d 606, 612 (Tenn. 1994). They then concede that courts may address questions of fact when "the uncontroverted facts and inferences to be drawn from [the facts] make it so clear that all reasonable persons must agree on the proper outcome." *Id.* It is the opinion of this court that this same rule of law is applicable to the question of whether a fiduciary breached his duties. Nevertheless, the facts of this case are such that reasonable persons could disagree as to the issue of whether Richard Hall breached either his duty of care or his duty of loyalty. Therefore, the trial court erred in granting appellees' motion for summary judgment.

V. ISSUE SIX: COUNT NINE

As to the ninth count, William Hall argued that Richard Hall breached his fiduciary duty as a majority shareholder of BTI by lowering the haulage rates paid to BTI, diverting back haul revenues derived from BTI to TDBC, diverting business from BTI, borrowing an excessive amount of money from BTI, and purchasing a truck for personal use with BTI assets. The problem with William Hall's argument is that Richard Hall does not own a majority of BTI's stock and William Hall does not own a minority of the stock. The brothers each own fifty percent of the company. Moreover, William Hall is the president of BTI and Richard Hall is the secretary. In his brief, William Hall admitted this problem and stated: "Strictly speaking, appellant is not a 'minority' shareholder of Beef Transport, because both he and Richard Hall each own 50% of the stock of that company. Nevertheless, Richard Hall controls and dominates the corporation because its business operations are run out of Tennessee Dressed Beef, leaving [William

Hall] no influence on the business affairs of the corporation." William Hall has failed to cite any authority to support his proposition that one of two equal shareholders who "controls" the company owes a fiduciary duty to the other equal shareholder as a result of their positions as shareholders. This court is unaware of any such rule of law. Because William Hall failed to establish an essential element of the case, i.e. that Richard Hall was a majority shareholder, the trial court properly granted summary judgment.

VI. Conclusions

For the foregoing reasons, the chancery court correctly granted summary judgment as to counts one, two, and nine, but erred in granting summary judgment as to counts three, four, five, six, eight, ten, and eleven. The case is remanded to the chancery court for any further proceedings, and the costs are taxed equally to appellants and appellees.

SAMUEL L. LEWIS, JUDGE

CONCUR:

HENRY F. TODD, P.J., M.S.

WILLIAM C. KOCH JR., J.